

**HOMOPHOBIC AND TRANSPHOBIC HATE CRIMES AND
INCIDENTS IN BOSNIA AND HERZEGOVINA
DATA COLLECTED FROM MARCH TO NOVEMBER 2013**

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INCIDENTI I ZLOČINI IZ MRŽNJE
U BOSNI I HERCEGOVINI
U PERIODU OD MARTA DO
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Content:

5

1. Introduction	7
2. Key findings	9
3. Bias-motivated violence against LGBT	11
3.1. Legal regulation of homophobic and transphobic hate crime in BiH	11
3.2. Homophobic and transphobic hate crimes and incidents	13
4. Police and other law enforcement authorities	19
4.1. Administrative structure of law enforcement authorities in BiH	19
4.2. Cooperation of Sarajevo Open Centre with the police and combat against hate crimes	20
5. Appendix: Glossary of terms used in this report	22
Author	29
About Sarajevo Open Centre	30

1. INTRODUCTION

This report is the product of the hate crime monitoring and documentation work of Sarajevo Open Centre (SOC) in the period March 1st to October 31st 2013, during which we documented 18 cases of hate crime, 5 cases of discrimination on the basis of identity and over 20 cases of hate speech on the grounds of sexual orientation and/or gender. At the beginning of the hate crime monitoring we established an online reporting system, for both victims and witnesses of hate crimes, which was advertised through our website lgbt-prava.ba, an online BH LGBT portal. The data entered through the site was collected in Google Docs forms modelled after the questionnaires that were adapted specifically for this project. Along with this online form, we continued using established forms of hate crime reporting – our legal counselling e-mail pravnosavjetovanje@soc.ba and the phone number of the organisation.

Through the process of recording and documenting cases we noticed that most people like to get in touch with members of SOC either by telephone, e-mail, or Skype, and face-to-face, if possible. We also recognized the need to be available for legal counselling even after working hours, which is why we established a separate mobile phone for this service available 24 hours a day. Most of the recorded and documented cases were reported to us by telephone and e-mail while the online reporting system was rarely used.

Online reporting proved to be a useful source for getting information in cases where victims were living away from the capital and were contacting us directly through the website questionnaire or via e-mail, especially concerning discriminatory incidents and threats. However, this way of collecting information made fact-checking harder since we were not present at the scene of the event and we had no proper way to interview the victim and verify the information gained. We had to

seek out as much information as possible to make the incident clear and establish its bias motivation.

Luckily, for most of the cases we documented, victims wilfully disclosed their identity and there was enough data or even witnesses' testimonies to confirm the occurrence of these hate crimes and incidents. This is the first year of homophobic and transphobic hate crime monitoring and documentation in BiH, so the number of cases collected is still too small to produce statistics or try to come to conclusions about hate crimes, their perpetrators, and victims in Bosnia and Herzegovina.

Still, the data collected has proved itself to be a valuable asset in our further work on encouraging LGBT persons to report hate crimes and developing a relationship of trust between LGBT persons and the police.

The present report is an outcome of *Step up reporting on homophobic and transphobic violence*, a project supported by ILGA-Europe, the European region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association. The objective of the project was to empower European LGBTI civil society organisations to more consistently monitor and report homophobic and transphobic hate crimes and incidents.

To prepare this work, ILGA-Europe had developed a harmonised data collection methodology in 2012. The methodology builds on international standards and on the expertise gained in different past activities, such as the elaboration of European-wide submissions to the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) in view of its Annual Report on Hate Crime¹, or ILGA-Europe's participation to the *Facing Facts! Making hate crime visible* project.²

Step up reporting on homophobic and transphobic violence was launched in 2013. ILGA-Europe's Documentation and Advocacy Fund, with the support of the Government of the Netherlands, provided dedicated resources to 12 national and local NGOs in Bosnia and Herzegovina, Greece, Ireland, Italy, Latvia, Lithuania, Moldova, Poland, Portugal, Spain, Turkey and Ukraine. These NGOs were trained on the methodology previously developed by ILGA-Europe, and committed to apply it in order to produce comparable data.

Data collection and publication is expected to be developed on a more sustainable and professional basis in the future, thanks to the capacity building aspect of the current project. Following this pilot initiative, ILGA-Europe's methodology will be made available to more European LGBTI civil society organisations.

¹ <http://www.osce.org/odihr/108395>

² <http://www.ceji.org/facingfacts/>

2. KEY FINDINGS

Cases of bias-motivated incidents collected during the period indicated with this report are still too few to allow us to group the information in order to extract any general overview or conclusions about tendencies of growth, characteristics of perpetrators, criminal offence, victims or any other facts surrounding these cases with any certainty.

What we do notice from most of the documented cases is that the perpetrators prefer the feeling of anonymity when engaging in criminal offences, usually by threatening their victims online or assaulting them in groups. These assaults also seem to be carried out mostly by younger individuals, even minors, aged from 15 to 30 years, though it does not always have to be the case.

The victims are usually picked out because of their sexual orientation or their connections with the LGBT community. It is also not unusual for perpetrators to be familiar with the victim, to know their identity, recognize them from somewhere, or even to have a closer relationship with the victim. This was true in 11 documented hate crime cases.

LGBT activists also seem to be the target of a greater number of hate crimes such as threats and violent assaults, but none of these incidents has yet resulted in a graver injury, and these incidents can also be attributed to the visibility of their work. In BiH, there are no out and public LGBT persons, which makes activists easily recognisable and memorable.

However, there is one positive trend we can speak about with certainty, and that is the professionalization of the police and the development of cooperation with police authorities. During the work on documentation of homophobic and transphobic violence in BiH, Sarajevo Open Centre learned that the police is eager and willing to work on processing of

hate crimes against LGBT people according to their highest professional standards, even putting aside their own prejudice. This kind of work did not go unrecognized LGBT persons. This cooperation led to several hate crime reports to the police and three hate crimes waiting to be investigated further in the prosecutor's office, with their perpetrators eventually sent to court.

3. BIAS-MOTIVATED VIOLENCE AGAINST LGBT PEOPLE

3.1. Legal regulation of homophobic and transphobic hate crime in BiH

Bosnia and Herzegovina is a federal country with two constituent units called entities (Federation of BiH and Republic of Srpska) and a third neutral, self-governing administrative unit under the sovereignty of Bosnia and Herzegovina called Brčko District. Each of these administrative units has a very high degree of autonomy – they have a president, a parliament, a government and courts, as well as competences in the areas of civil administration, health care, education, internal affairs, etc. The BiH State itself has competences over the areas of foreign policy, defence, border monitoring, elections, foreign trade, fiscal and monetary politics, and more.

The criminal system follows the complex political system of Bosnia and Herzegovina, thus resulting in four different criminal codes. There is one on the state level, two on the level of constituent units or “entities” (Republic of Srpska and Federation of BiH), and a fourth on the level of Brčko District, the neutral, self-governing administrative unit.

Matters regarding hate crimes in BiH are, or should be, regulated by the criminal codes of the entities and Brčko District. Hate crime regulation was introduced into the Criminal Code of Republic of Srpska and the Criminal Code of Brčko District in 2010, and similar initiatives have

been taken on in Federation of BiH, but they were never carried through. However, 2013 has been rather turbulent concerning legal regulation of hate crime in Republic of Srpska and Federation of BiH since the amendments to their criminal codes were initiated in order to introduce (in Federation of BiH) or expand (in RS) hate crime regulation.

Currently, hate crime is explicitly regulated in the Criminal Code of Republic of Srpska, meaning that hate crime as a criminal offence is defined in the law as well as the qualified forms of criminal acts in case of their bias motivation. This definition of hate crime was introduced into the Criminal Code of RS, in July of 2013 and is the result of the advocacy and lobbying actions of the Coalition for Combat Against Hate Speech and Hate Crime. The adopted definition is partially based on the amendments that SOC drafted in the name of the Coalition.

The Criminal Code of Brčko District does not explicitly define hate crimes, but it regulates such crimes by defining bias motivation as an aggravating circumstance and regulating qualified forms of criminal acts that are bias-motivated.

Federation of BiH unfortunately still lacks legal regulation of hate crimes. However, the first initiative for the amendment of the Criminal Code was started in July of 2013. The amendments of the Coalition for Combat against Hate Speech and Hate Crime were integrated into the Law on Amendments to the Criminal Code in the House of Representatives of the Parliament of Federation of BiH, but the law was voted against in the House of Peoples for political reasons. At the moment, there are two initiatives to amend the Criminal Code and regulate hate crime – one from the Government of Federation of BiH and another one from the Parliamentary Women's Club of the House of Representatives of the Parliament of Federation of BiH. SOC, as a part of the Coalition for Combat Against Hate Speech and Hate Crime, actively participated in the drafting of the proposition of the Parliamentary Women's Club and is also currently lobbying within the Parliament of Federation of BiH for the amendments of the Coalition regarding hate speech and hate crime to be included into the Draft of the Law on amendments to the Criminal Code of Federation of BiH which should be discussed in the following session of the Representative house of the Parliament of Federation of BiH.

3.2. Homophobic and transphobic hate crimes and incidents

1. Homicide

During the hate crime documentation period indicated in this report, Sarajevo Open Centre recorded no cases of homicide motivated by the sexual orientation or gender identity of the victim.

2. Extreme physical violence

The only case of extreme physical violence documented by Sarajevo Open Centre in September of 2013 may be a good indicator of how non-reporting of hate crimes and the perceived impunity of the perpetrators have a great effect on the escalation of violence and the level of violence used against the victim.

The victim in question contacted SOC in order to report that he was threatened with a knife by a group of young men, approximately five of them, aged 18 – 25, who assaulted him physically and threatened to kill him because he was gay. This assault, according to the victim, was the climax of three years of verbal and emotional abuse he had been suffering from the same group of men, whose actions including throwing stones and objects at his house, insults, threats, and intimidation. In this specific case, the same group of individuals targeted and consistently abused the victim because of his sexual orientation, which they came to learn due to geographic proximity; they lived in the same neighbourhood. These incidents were immediately reported to the police and were investigated. However, the victim, out of fear and shock, refused to identify his attackers in police file photos.

Several days later, the same perpetrators surrounded the victim on his way to town and, in broad daylight, harassed and physically assaulted him in such a way that he suffered a severe hip injury and was sent to the hospital for an urgent surgical procedure. Police officers investigating the case were warned right away, and after another interview with the victim and a thorough investigation, they identified and apprehended the perpetrators.

The case was turned over to the prosecutor's office in order to be processed and brought before the court. Unfortunately, because of the lack of legal regulation, this case will be neither classified nor processed as a hate crime. The incident in question happened in Sarajevo, the capital city of BiH.

3. Assault

As in the previous case of extreme physical violence, the three cases of assault that were documented in the time period indicated

by this report support the general perception that perpetrators of homophobic and transphobic hate crimes are usually younger men aged 18 to 25 who carry out these incidents in a larger group. Unlike the assault in the previous case, both of these attacks happened after 10 pm in public places, also in the capital city. In March of 2013, several LGBT activists were threatened and attacked by a group of 10 to 15 young men aged 18 to 25. This attack occurred next to the building of the Presidency. The activists reported the case immediately upon the arrival of the police. However, in order to protect several non-activists and non-outed persons who were with them at the moment, they decided not to insist on police investigation of the case.

Not long after the previous assault, in July of 2013 a young gay man was assaulted by a number of hooded young men on account of his sexual orientation. The assault occurred in the bar where he worked, which is located not far from the building of the Presidency. Two young men first visited the bar, returning later with more friends and physically assaulting the gay waiter while he was taking their order. The assault was not severe; however, it did cause physical damage to the victim, who later visited the doctor because of constant pain in the shoulder area. The case was reported to the police who proved to be highly supportive and understanding, and the perpetrators and witnesses were called for questioning. An investigation was conducted and further actions are currently awaited. Because of the lack of legal regulation, this case will neither be classified nor processed as a hate crime.

The third case of assault SOC documented, which occurred in August of 2013, raised the issue of domestic violence and unlawful treatment of LGBT people. A young gay man from a smaller city contacted SOC for psychological support after he had been suffering domestic abuse ever since he came out to his mother. The victim attempted suicide, which failed, and was hospitalised for a while. He was then assaulted and beaten up by his cousin, a peer, whom he reported to the police. However, after the pressure he had to endure from his family, he withdrew the complaint and is currently going to psychological counselling. His family – mostly the parents of the perpetrator – have submitted the victim to several *healing* treatments in religious institutions in order to (in their own words) “relieve him and liberate him from his sin.”

The LGBT activists who were assaulted in March 2013 found themselves in a similar position in October when a group of five young men (some of whom were minors) barged into the hall where the activists were, along with two other civil rights organisations. They were promoting a new project of digital stories of LGBT people. The five young men started threatening and shouting at the people who were present. Even though the perpetrators threatened the activists with violence, they ran away as soon as the police was called and there were no injuries. The

police reacted quickly and adequately. They began investigating the incident, however, the activists in question once again decided against the investigation.

4. Damage against property

During the summer of 2013, several gay men in Sarajevo were robbed by a group of armed perpetrators, aged 20 to 30 years, who would arrange a meeting through a gay dating site with them. One of them would lead the victim into the area where his armed companions awaited him to assault and steal the victim's possessions. One of the victims contacted Sarajevo Open Centre in August in order to inquire about the judicial procedure regarding this case, his own rights, and a plan of action. The victim immediately reported the case to the police, whose reaction was rather professional, enabling the person in question and another victim of the same perpetrators to enclose all details and overcome the initial shock and lack of confidence in public institutions. The victim who reported the case claimed there were four armed perpetrators surrounding him on the night of the robbery and was told by those perpetrators that there was another one guarding the alley where the incident took place. The police apprehended only two of them, as they claim they had no more accomplices.

The response of the criminal system in this case was rather swift, and the prosecutor's office stepped up and engaged in the criminal investigation. and prosecuted the perpetrators. Unfortunately because of the lack of legislation, this case will neither be processed nor registered as a hate crime.

Despite the organised robberies and the obvious targeting of gay men as victims most likely not to report the case, during the media coverage of the news, it was revealed to the public that one of the perpetrators – the one arranging meetings with victims – was, in fact, a gay man himself. He teamed up with his heterosexual friends in order to achieve profit, which is an argument the defence hopes to use in proving there was no bias motivation in targeting the victims.

5. Arson

During the hate crime documentation period indicated in this report, Sarajevo Open Centre recorded no cases of arson motivated by sexual orientation or gender identity of the victim.

6. Threats and psychological violence

Threatening and creating psychological pressure against LGBT people seem to be the most common hate crimes documented by Sarajevo Open Centre. These threats vary greatly, from anonymous Facebook hate messages and threats to real life incidents where victims are offended, intimidated and harassed in multiple ways.

As benign as the internet and Facebook threats might look, considering all of the hate speech towards LGBT people expressed daily on news portals and articles, the lack of control and sanction within this *online or internet* area enables the perpetrators of these incidents to easily escalate from hate speech to actually committing hate crime. Just in several comments or posts, these individuals go from expressing general derogatory statements like *gays are sick* or *LGBT people are deviant and a threat to our children* to actually inciting violence and endangering people's lives by revealing their personal information and outing them, if not threatening them directly. They then enable other like-minded individuals to gain information that might actually – and has, in the cases recorded by Sarajevo Open Centre – led to the violation of the human rights of LGBT individuals.

Sarajevo Open Centre documented three cases of actual hate crime committed online. In all of them, male users (anonymous or through their Facebook profiles) targeted LGBT activists and threatened them with violence and even homicide. In the gravest of these cases, in April 2013, LGBT activists were threatened on a forum topic named 'LGBT population demanding its rights' by a number of anonymous forum users who not only revealed the activists' personal information and Facebook profiles and a portal of an LGBT organisation (containing information on all its members), but also specifically targeted two activists. The main person targeted is a prominent LGBT activist, and they used his identity, posting comments and information on his behalf. The aim of the users who made the topic was to decide whether they are going to do something and react to the fact that the LGBT population is demanding its rights, or to just let it slide. Later in the year, an LGBT rights supporter was threatened through Facebook to leave the town she lives in because (in the perpetrator's own words) "she and people like her are spreading the disease and are sick." The threatening stopped as soon as she threatened to call the police.

Even though the case was reported to the police, they stated that the area of online crime is not under their jurisdiction and that they are not able to process such threats as an actual criminal offence.

Four other cases of threats and psychological violence showed that victims are most likely to be confronted in person by a person they already know, an employer or a co-worker, neighbour, or an acquaintance of theirs. In such cases, hate crimes range from blackmailing and intimidation to actual persecution and systematic harassment aimed to scare and trap the victims. Only one of these four cases was reported to the police. Three other victims were too afraid of the consequences to try to protect themselves.

A group of young male neo-Nazis in a smaller town in Bosnia

and Herzegovina started intimidating and stalking a gay man, his partner, and their colleagues involved in work on human rights of ethnic minorities in that town. These neo-Nazis wrote graffiti revealing the sexual orientation of the gay man and his boyfriend, both of whom are human rights activists, and threatened to “deal with” them. The perpetrators have also been following their work companions, friends, and family, trying to threaten and intimidate them. The perpetrators always chose moments when the victims were either alone or with a small number of close friends to approach them, and they never use direct threats. They always seem to *warn* the victims that there are very dangerous and armed individuals and groups that might hurt them if they continue doing their work. The case has been reported to the police. Police officials talked to the perpetrators and the harassment stopped, this combined with the lack of solid evidence and the witnesses (since it is mostly just the statement of the victims against the statement of the perpetrators) made victims decide not to proceed with the case. . Since this case was committed in a part of Bosnia and Herzegovina where legislation actually regulates hate crime, in Republic of Srpska, these incidents might be processed as hate crimes if the institutions in charge react adequately.

In October of 2013, in the capital city, one young woman was attacked while waiting for her friend outside her building. She was attacked by the owner of a car wash – an older man known for his previous criminal behaviour – in front of whom she had parked her car after receiving the previous authorisation from the workers. The man jumped on her car, claiming that she had hit him and telling her that everyone would testify that this had really happened. The perpetrator then proceeded screaming at her, stating that she and her friends should not come to the part of town where he was born, and that all lesbians should be fucked properly. The police came, and the witnesses confirmed that the girl did not hit the car wash owner and that he was the one who verbally assaulted her. However, the victim refused to report the perpetrator since she was afraid he might attack her and her friends due to his criminal and violent past and the fact that they live nearby.

7. Other incidents with bias motivation

Sarajevo Open Centre recorded two cases of public outing of individuals. In one case, in January of 2013, a young man’s sexual orientation was revealed on Facebook by his former friend who posted an image of that young gay man along with an offensive comment implying his sexual orientation. This picture was later commented on in an insulting way by the person who published it and his friend, revealing completely and mocking the sexual orientation of the young man. The picture was obviously private and there was no confusion about the identity of the young man in it. The case was reported to Sarajevo Open Centre by a

witness who was a Facebook friend of the perpetrator and we have no information on whether that young man was told about what happened and whether some steps to sanction this kind of behaviour were taken. Another case occurred in June of 2013 when an article was published on a web portal about a famous BH TV host claiming that he outed himself to his co-workers after deciding that he no longer wants to hide his sexual orientation and boyfriend from them. The article was taken off the portal in no time; however, it was exposed long enough to be seen by a number of visitors of this portal.

Three other incidents, even though they were clearly bias-motivated, can only be presented as discriminating incidents, both of which occurred in smaller BH cities. One concerned a screening of a movie depicting homophobia in BiH in April of 2013. The editor of an online news portal that usually advertises the local events refused to advertise the screening of this film and told its director very directly that they cannot advertise his project because of its subject, but that they will certainly advertise his work on other topics. In March of 2013 a young female LGBT activist from Banja Luka, the largest town in Republic of Srpska, was banned from moving into the apartment she rented after her roommates revealed to the landlord she was a lesbian. The case was reported to SOC and even though the girl wanted to report it, she eventually decided not to go to court. Also, in July of 2013 SOC was contacted by a young gay man who lived in a small town and who claimed he was denied employment on account of his sexual orientation. He claimed his potential employer knew about his sexual orientation and refused to employ him because of the reputation his company might gain. The victim did not report the case to any authorities other than NGOs, and there was no proper way to prove that the motive for denial of employment was actually his sexual orientation.

4. POLICE AND OTHER LAW ENFORCEMENT AUTHORITIES

4.1. Administrative structure of law enforcement authorities in BiH

The institutions in charge of implementing the criminal codes and investigating criminal offences in Bosnia and Herzegovina are the Ministry of Security of BiH on the state level, the Ministry of Internal Affairs of Republic of Srpska, the Federal Ministry of Internal Affairs (for Federation of BiH) and the Police of Brčko District. The Federal Ministry of Internal Affairs shares its jurisdiction with ten of the cantonal ministries since each of the cantons of FBiH has its own ministry of internal affairs.

The police forces working directly with the cases of hate crimes are coordinated, depending on the territory where the case happens, by one of the cantonal ministries of the internal affairs, either the Ministry of Internal Affairs of Republic of Srpska or the Ministry of Internal Affairs of Brčko District. These ministries are in charge of ensuring the highest obtainable standard of police work, protection of people and property, ensuring the respect of legal regulations, prevention and investigation of criminal offences, and protection of public peace and order.

4.2. Cooperation of Sarajevo Open Centre with the police and combat against hate crimes

Sarajevo Open Centre initiated cooperation with the police in the fall of 2012. To achieve these aims, SOC put up posters in police stations throughout BiH that stated that LGBT persons are welcome there and no discrimination on the grounds of sexual orientation and gender identity will be allowed within these institutions. SOC contacted each of the 12 ministries of internal affairs (two of the entities and 10 of the cantons) and the police of Brčko District in order to gain their authorization and logo for the posters and ensure that these posters will be distributed to all of the police stations under the jurisdiction of each of the ministries. Out of 13 institutions, only 5 of the cantonal ministries agreed to put their logo on the posters and put them up in their precincts.

One of these ministries was the Ministry of Internal Affairs of Canton Sarajevo, which later initiated a meeting between Sarajevo Open Centre and the representatives of the police. This meeting initiated mutual cooperation on sensitisation of police officers for work with LGBT persons and on LGBT related cases. This cooperation was already tested in practice through mutual work on the case of extreme physical violence against an older gay man, which was reported to Sarajevo Open Centre by the victim himself. The victim came to SOC for support and legal advice before reporting the case to the police and was more than relieved when he learned that SOC could contact LGBT friendly officers to take his statement and initiate the investigation. Cooperation on this case of hate crime was more than promising, since the police officers took great care and acted very professionally with the victims, and did their best to increase the trust of the individuals as well as of the other LGBT persons in law enforcement institutions.

As a part of the cooperation with the police and the Ministry of Internal Affairs of the Canton of Sarajevo, Sarajevo Open Centre organized a training for the police officers who work with the community. This training included 20 police officers; the police officers in question are the ones who are usually the first ones to receive the victim and the report of a case.

The training lasted two days and consisted of two parts. The first general part aimed at tackling prejudice and explaining the proper and correct terminology, identities and history of LGBT persons. It also offered a human library consisting of local representatives of LGBT persons responding to the various questions of police officers. The second part of the training focused on hate crime, the general presentation of these crimes, and the presentation of individual local and regional cases in order to raise the awareness of the police officers on the necessity to establish a relationship of trust with LGBT persons and encourage these persons to report cases in order to process them and effectively work on diminishing their numbers.

The training resulted in a somewhat organized network of police officers that will be in contact with Sarajevo Open Centre and cooperate on the cases of hate crime reported to Sarajevo Open Centre, as well as receive victims with proper care and professionalism. It is important to emphasize that Sarajevo Open Centre has only worked and cooperated with the individual police officers already working in the community in the Canton of Sarajevo, which is just one of the cantons of Federation of BiH, and has not yet initiated cooperation with police academies on the education of police personnel.

However, some initial steps were taken and basic cooperation between Sarajevo Open Centre and the police has been established. SOC itself will, after this first training for police officers, continue to work on strengthening this cooperation, sensitising police officers, and establishing and raising the trust of LGBT people in law enforcement institutions and personnel.

5. APPENDIX: GLOSSARY OF TERMS USED IN THIS REPORT - TYPES OF LGBTI-PHOBIC HATE INCIDENTS AND BIAS INDICATORS

1. Types of hate incidents

We are aware that the criminal law differs between countries in Europe. The definition of hate crime used in this project comprises two distinct elements:

- It is an act that constitutes an offence under criminal law, irrespective of the perpetrator's motivation; and
- In committing the crime, the perpetrator acts on the basis of prejudice or bias.

This definition is based on the OSCE's definition of hate crime³.

As a result, other hate incidents that do not constitute a criminal offence irrespective of the perpetrator's motivation will not be considered as 'hate crime' for the purpose of this project.

3 <http://www.osce.org/odihr/66388>

For the purpose of classifying your collected data we therefore propose two main broad groups of hate incidents:

- Group I: Actions that are “crimes” according to the national criminal law in most European countries a (categories 1-6);
- Group II: Incidents that may not qualify as crimes irrespective of the perpetrator’s motivation, but that are elements of a LGBTI-phobic context and therefore are important to be monitored (category 8).

The different types of incidents (‘homicide’, ‘extreme physical violence’, ‘assaults’, etc.) can take place in a range of settings including in public, in someone’s home (domestic violence) and in institutions (for example hospitals).

Group I: Actions that are crimes according to the national criminal law in most European countries

1. Homicide

- Any attack on a person that causes loss of life.

2. Extreme physical violence

- Any attack on a person that potentially causes serious physical harm.
- Any attack on property, for example by arson or petrol bombs, where there is the potential for people in the property to be killed, for instance if the building is inhabited or occupied at the time of the attack.
- Bombs, including letter bombs. This includes any viable device that either detonates or is defused, and therefore was life threatening. It also includes any device which is assessed to have been intended by its sender to be viable, even if after analysis it is found that it was incorrectly constructed and therefore would not have gone off.
- Kidnapping.
- Shooting.
- Attack by weapon or any other object that can be used to harm.

2.1. Sexual assault

- An act of sexual violence can be committed by the victim’s

partner (married or not), previous partner, family member or co-habitant.

- Rape.
- Sexual assault.
- Sexual exploitation by a helping professional, i.e. sexual contact of any kind between a helping professional (doctor, therapist, carers, teacher, priest, professor, police officer, lawyer, etc.) and a client/patient.
- Sexual harassment, including unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature.

3. Assault

- Any physical attack against a person or people, which does not pose a threat to their life and is not serious. This would include lower level assaults.
- Attempted assault which fails, due to self-defence, or if the victim runs away.
- Throwing of objects at a person or people, including where the object misses its target.

4. Damage of property

- Any physical attack directed against property, which is not life-threatening. This includes also the daubing of abusive slogans or symbols, or placing stickers or posters on property, including graffiti, or damage caused to property, where it appears that the property has been specifically targeted because of the fact that there is a perceived connection between the owner and the LGBTI communities.
- Damage to cars or other personal property belonging to members of LGBTI communities, where it is apparent that they have been targeted for this reason.

5. Arson

- Arson attacks on property where there is no threat to life, for instance if the building is uninhabited at the time of the attack.
- Failed attempts, for instance attempted arson where the fire fails to catch or the arsonist is disturbed

6. Threats and psychological violence

- Any clear and specific threat, whether verbal or written. If the threat is not clear and specific then the incident should be recorded as Abusive Behaviour.

- Any 'bomb' which is assessed to be a hoax. This would include something that was designed to look like a real device but not intended to be viable, for instance if it does not contain any explosive material.
- Stalking, including repeated undesired contact (phone calls, emails, letters, show up unexpectedly, etc.), following or laying in wait for the individual, making threats to the individual or her/his family.
- Blackmailing to divulge publicly, or to family members or at work, that a person belongs to the LGBTI community.
- Restriction of freedom (e.g. locking up a person).
- Defamation, such as outing the LGBTI identity.
- Bullying (e.g. at school, at work place).

Group II: Other incidents with a bias motivation

These incidents may or may not qualify as crimes under national law. They are elements of a LGBTI-phobic context and therefore are important to be monitored. While they illustrate the CONTEXT, they are not the MAIN focus of THIS PROJECT.

1. Abusive behaviour

1.1. Hate speech

- Individually targeted verbal abuse, whether face-to-face or via telephone or answer phone messages. This includes abuse that is mistakenly directed at, or overheard by, people who are not members of the LGBTI communities.
- Individually targeted written abuse (including emails, mobile phone text messages, and social media (facebook, twitter, etc.) as well as targeted letters (that is, those written for and sent to or about a specific individual). This includes written abusive comments about LGBTI communities or persons that are sent to individual people, regardless if they are members of the LGBTI communities. This is different from a mass mailing of abusive leaflets, emails or other publications, which is dealt with by the separate Literature category.
- Not individually targeted verbal or written abuse (e.g. general homophobic and transphobic comments not addressed to anyone in particular), including those channelled via the internet and social media.
- Public hate speech e.g. by politicians.

1.2. Literature and Music

- Mass-produced abusive literature or music that is sent to more than one recipient. This covers mass mailings rather than individual cases of hate mail, which would come under the category of Abusive Behaviour or Threats (depending on content).
- Literature that is abusive in itself, irrespective of whether or not the recipient is from the LGBTI communities.

2. Discriminatory incidents

- Any form of discriminatory incidents which is not considered a crime.

2. Bias indicators

Bias indicators are objective facts that should be considered in determining whether a crime can be said to be homophobic or transphobic. They do not, in themselves, confirm that any incident was a hate offence. However, a bias indicator provides an indication that further investigation with a view to establishing the motive may be required. It is vital to record this information in order to evidence the possibility that an incident was bias motivated. Without this information, investigators are unlikely to take the allegation seriously and international organisations will not report it. This is also important for the purpose of data classification.

The following preliminary remarks are important to understand and use the proposed list of bias indicators correctly:

- While it is very important to take a victim's perception of the incident into account, NGOs must be aware that the victim may not recognise the incident as having been motivated by hate. On the other hand, the victim may not understand the entire context which led to the incident. For example, an LGBTI person may not get a job because someone else was more qualified, not because he/she is LGBTI.
- Equally, it is not essential to determine whether the victim is actually a member of the LGBTI communities when identifying bias indicators. The issue of concern is the offender's motive based on his or her perception of who the victim is. Therefore it is important to look for

evidence of bias, as opposed to evidence of the characteristics of the victim that s/he belongs to the LGBTI communities. Simply stating that the victim belonged to the LGBTI communities is not sufficient for an incident to be classified as a bias crime.

- Hostile expressions against members of the LGBTI communities may change over time. Also, the nature of hate crime intelligence may not be as obvious as that concerning certain areas of criminality (such as burglary or robbery), and the danger comes when indicators are misconstrued or not interpreted properly. Therefore, it is important for NGOs to remain in close consultation with possibly LGBTI communities to equip NGOs with an understanding of how LGBTI communities can be targeted. This includes remaining familiar with the language that is currently being used to express hostility and prejudice against LGBTI communities. Listening to and acting upon all sources of information is also vital to ensure the proper interpretation of hate crime/bias indicators.
- It is also important to underline that the perpetrator may also belong to the public authority, e.g. police force, law enforcement agent, etc.

For all these reasons, the proposed list of bias indicators has to be understood as an open/indicative list.

Bias indicators and questions that can help determine if a bias indicator is present

Victim perception - Does the victim perceive that the incident was motivated by bias? Keep in mind that the victim does not always understand that s/he may have been victimized in a bias-motivated attack. Victims often search for other reasons to explain an attack because their sexual orientation, gender identity or gender expression represents an aspect of themselves that is not generally possible to change.

Witness Perception - Does the witness perceive that the incident was motivated by bias? Victim perception and witness perception may be different. Both need to be considered.

Perpetrator Perception - Did the perpetrator mention something about his/her motivation at the time of the incident or later? What did he/she say?

Media reports - How does the media report this incident?

Differences in perceptions between all parties in terms of racial, religious ethnic/national origin, gender, sexual orientation, etc. - Do the suspect and victim differ in terms of sexual orientation, gender identity or

gender expression? Has the victim recently moved to the area in which the incident took place? Was the victim engaged in activities of LGBTI communities at the time of the incident? Is the victim, although not a member of LGBTI communities, is a member of an advocacy group that supports members of the LGBTI communities, or was the victim in the company of a member of LGBTI communities? Is the victim associated to a member of the LGBTI communities (e.g. married, or a family member)? Is the victim's sexual orientation, gender identity publicly known?

Location and/or timing - Was the victim in or near an area or place commonly associated with or frequented by members of the LGBTI communities (e.g. an LGBT bar, venue)? Did the incident happen near locations related to the perpetrator's group (e.g. headquarters of extremist organizations) or any hot spots for hate crimes? Did the incident occur on a date of particular significance for the LGBTI communities (e.g. day of LGBT pride march)?

Language and word used, including written statements, gestures, graffiti, visible signs of the suspect - Did the suspect make comments, written statements or gestures regarding the victim's background? Were drawings, markings, symbols or graffiti left at the scene of the incident? Did/does the suspect wear any visible sign (tattoo, clothes, and haircut) to deduce his/her membership to a specific group opposed to LGBTI communities?

Organised hate groups - Were objects or items left at the scene that suggest the crime was the work of paramilitary or extreme nationalist organisations? Is there evidence of such a group being active in the neighbourhood? Did any organized hate group claim responsibility for the crime?

History of previous bias crimes/ incidents - Is there a history of similar incidents in the same area? Has the victim received harassing mails or phone calls or experienced verbal abuse based on his/her sexual orientation, gender identity or gender expression? Has the victim been blackmailed that his/her sexual orientation, gender identity or gender expression will be made public (e.g. the victim's identity as LGBTI)?

In case of attacks against property - Is the attacked/damaged property in a structure or location that belongs to LGBTI communities (e.g. LGBTI venue/bar)?

Offender Characteristics - Does the offender have a history of previous incidents/crimes with a similar modus operandi and involving other victims of the same race, religion, ethnicity/national origin, disability or sexual orientation? Does the offender have a prior history involving hate motivated conduct? Is the offender a member of, or associates with members of, an organized/less organized hate group? Does the perpetrator, in post-arrest statements or in the commission of the crime, recognize the victim to be a member of LGBTI communities?

Degree of violence - Was the degree of violence used against the victim particularly intense?

AUTHOR

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ABOUT SARAJEVO OPEN CENTRE

Sarajevo Open Centre is an independent, non-partisan and non-profit organisation dedicated to advocating for the full respect of human rights and decreasing the level of discrimination on the grounds of sex, sexual orientation and gender identity through community activities and promotes the human rights of women and LGBT persons in general public. Sarajevo Open Centre advocates for improved legislation and policies and the implementation of the existing ones within BiH institutions and international bodies.

Sarajevo Open Centre was established in 2007 and we have been working intensively since 2011, when we opened our first office and had our first full time staff working in the Sarajevo Open Centre. Now, our team is composed of 9 employees and 3 volunteers.

We are part of the following networks:

Koalicija protiv govora i zločina iz mržnje - Coalition against hate speech and hate crimes

Ženska mreža u BiH – Women’s Network in B&H

Regional Network Against Homophobia

Babelnor Network

Mreža izgradnje mira u BiH – Peace Network in B&H

Mreža pravde u BiH – Justice Network in B&H

Koalicija “Jednakost” protiv etničke diskriminacije – Coalition “Equality” against ethnic discrimination

Inicijativa za monitoring evropskih integracija BiH - Initiative for Monitoring BiH’s European Integration

Our specific objectives are to increase awareness among state institutions/ officials about the necessity to fully implement International, European and national human rights standards towards women and LGBT persons, to raise citizens awareness about the LGBT rights and political, social and economic rights of women and to empower and strengthen the LGBT community by implementing supportive community based activities, related to their rights and needs.

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